

Mount Shasta Bioregional Ecology Center

PO Box 1143

Mount Shasta, CA 96067

Phone (530) 926-5655 Fax 530 926 5474

November 10, 2003

Regarding: **Docket No. 03-RPS-1078 RPS Proceeding**

Via e-mail to: docket@energy.state.ca.us;
mlehman@resource-solutions.org
jhg@cpuc.ca.gov

hard copy via U.S. Mail to:

California Energy Commission
Docket No 03-RPS-1078
Docket Unit MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

Center for Resource Solutions
Presidio Bldg. Arguello Blvd. 97
PO Box 29512
San Francisco, CA 94129
attn. Matthew Lehman

**Implementation of Renewables
Portfolio Standard Legislation
Public Utilities Code
Sections 381, 383.5, 399.11 through
399.15, and 445;
SB 1038, SB 1078**

Background:

The Energy Commission and the Western Governors' Association (WGA) staff seek input from interested parties on the *Needs Assessment of the Western Renewable Energy Generation Information System* draft report.¹

At the October 8th 2003 CEC Business Meeting, the California Energy Commissioners adopted the Final Committee Report (Pub No 500-03-049FD), Phase 2 Implementation Issues (Available on-line at: www.energy.ca.gov/portfolio/documents/index/html). The RPS Phase 2 implementation Report included the certification of renewable electricity generation facilities as well as the distribution of supplemental energy payments and the

¹ The report is available on the Energy Commission's website at:

www.energy.ca.gov/portfolio/documents/index.html

or at CRS' website at:

www.resource-solutions.org/wregis/needs.draft.pdf

development of an accounting system for the Renewable Portfolio Standard. We participated in the October 8th Business Meeting by providing oral comments and provided written comments dated September 29, 2003.

However, the CEC deferred key decisions on the RPS issue that this body should be aware of because of the irreversible negative impacts to minority and low-income populations, especially Native American culture and their sacred lands. The decisions of how the RPS will be implemented will determine *which* projects will be certified, *which* projects will receive substantial financial support, [and thus *which* energy projects receive renewable credits and power contracts to meet the RPS] and will determine whether cultural resources, sacred lands, and projects that have documented Environmental Justice impacts that can *not* be mitigated are brushed under the carpet in an effort to achieve an RPS standard at 'all costs' or whether there will be provisions that support these minority and low-income populations, their cultural ways, and their sacred lands. These decisions are not trivial, as they will determine whether Native Americans are free to practice their land based religions in any meaningful way. We ask you to seriously consider our comments and recommendations.

Our comments are focused on the issue of Eligibility:

- a) Recommending implementing Public Utilities Code 383.5 -- preferential support for projects with tangible benefits to minority and low-income populations
- b) Recommending avoiding certification of projects with a documented Environmental Justice impact-- set forth in Executive Order 12989 and defined as a disproportionate impact to a minority and low-income population
- c) Eliminating *discrimination* as defined under Title VI of the Civil Rights Act

The Phase II Report outlined certification criteria that did *not* provide a preference to those renewable projects that would benefit minority populations. The CEC deferred this very important decision. Although the Report deemed it important to include *other* RPS certification criteria for projects, its avoidance of this issue can be seen as a *silent* approval to those renewable projects that have documented Environmental Justice impacts. [See Publication 500 03 049 at page 2: "the Committee has *deferred* consideration of the issue of whether it should provide preference to projects that provide tangible benefits to communities with a plurality of minority or low-income populations."].

We believe that the RPS standards should provide preferential support to projects that have a documented tangible benefits to communities with a plurality of minority or low-income populations, which means that the projects are void of Environmental Justice Impacts. We strongly ask for your support of renewable projects that do not destroy or degrade sacred lands or sacred sites of minority and low income populations; a position which would indicate that those in decision-making positions are not discriminating against this population.

The California Energy Commission is well aware of two controversial geothermal projects that have documented Environmental Justice impacts *that can not be mitigated*.

The Fourmile Hill and the Telephone Flat Geothermal Development Projects are the name of these two proposed geothermal development projects in the sacred Medicine Lake Highlands that have *documented* disproportionate impacts to Native Americans, *that can not be mitigated*, resulting in an Environmental Justice Impact. These two geothermal projects are proposed by Calpine Corporation, who was *noticed* and *attended* the Workshops on RPS implementation. [See Appendix A –Participants in the RPS implementation Proceeding]. The affected Pit River Tribe and the Native Coalition for Medicine Lake Highlands Defense were *not* noticed, despite their longstanding communications with the CEC on funding awards and solicitations.

We would like to the Western Governor’s Association to be aware of what the CEC has been informed of over the years—namely that this highly sacred area was designated in 1999 a Traditional Cultural District by the Keeper of the National Register of the Historic Places, based on supporting ethnographic documentation.

The CEC has a legal provision [SB 1078 and SB 1038 codified in Public Utilities Code 383.5] that would allow the CEC to implement guidelines for projects that support minority and low-income populations. As it now stands, that language does not exist. And given the current criteria outlined in the Phase II Report, this simply means that projects, like those at the Medicine Lake Highlands, would be eligible for certification and financial incentives that would ultimately facilitate the industrialization of the sacred Medicine Lake Highlands, despite the significant and disproportionate impacts to a minority low-income population, the Native Americans.²

We thank you for your consideration of these comments and hope that we have clearly expressed the grave importance of additional RPS language. We respectfully request a copy of the full set of responses to this Data Request and to receive all Notices regarding the subject.

Sincerely,
Peggy Risch
Peggy Risch
Environmental Research Associate

Cc
Debbie Sivas, esq.
Michelle Berditshevsky, Native Coalition
Pit River Tribe
Janie Painter, SMLC
Mike Boyd, CARE
Governor Arnold Schwarzenegger
DOJ

² We include in this record the July 10, 2003 letter from EarthJustice to Darcy Houcks, CEC legal council as well as numerous transcripts and written comments over the years from the Native Coalition of Medicine Lake Highlands Defense, the Pit River Tribe, and the Mount Shasta Bioregional Ecology Center on numerous CEC funding solicitations.